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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

PORTLAND DIVISION

UNITED STATES OF AMERICA,

Plaintiffs,

vs.

TONY DANIEL KLEIN,

Defendants.

Case No. 3:22-cr-00084-SI-1

DECLARATION OF COUNSEL IN
SUPPORT OF MOTION FOR NEW
TRIAL UNDER RULE 33

1. We are the assigned counsel for the above-captioned defendant.
2. Prior to trial beginning July 10, 2023, we reported to the court we were not ready for trial due to, among other things, additional records needing to be gathered that were necessary for Mr. Klein's defense.

3. Those motions were made in March 2023, in June of 2023, and on the morning of Mr. Klein's trial, on July 10, 2023. The government opposed all three motions, and the Court denied each one.
4. The bulk of the records that are the subject of the motion for new trial were subpoenaed in June of 2023, prior to Mr. Klein's trial beginning. A smaller set of records—recorded jail phone calls—were subpoenaed mid-trial, as soon as the need for them became apparent. These records were not received by the defense until after the jury began deliberations.
5. The records that are the subject of the motion for new trial are, in essence, the communications of every single charged adult victim, and a few additional pertinent witnesses, during their time at the Department of Corrections and up until July 4, 2023.
6. The records include phone call logs, video messaging logs, and text message logs. The records are thousands of pages long. The records also seem to indicate that they give direct access to the actual recorded calls as well as recordings of the video messages, though we have not confirmed whether that is the case yet or whether the hyperlinks are empty on purpose.
7. We have not been able to go through all the records yet, because of their length listed above.
8. We will not be able to go through them by the time the current due date for post-trial motions. Therefore, we are including the entirety of the records, even ones we have not yet reviewed, as an exhibit to our motion for the trial court as well as for appellate review.
9. The records that defense counsel has reviewed, so far, illustrate that at least some of the charged victims in this case appear to have committed perjury. Additionally, the records contain a variety of substantive exculpatory information that would have been available to Mr. Klein at trial. Even if found by this court not to be admissible, Mr.

Klein would have been able to file motions and preserve for appellate review several legal issues, which now will remain unpreserved and unavailable for appellate review because of the trial court's denial of the defense's motions to continue.

10. In defense counsel's limited review of the records, we have already located the following information:

a. Adult Victim ("AV") 6 testified at trial that she was on a website called Paper Dolls for a short amount of time. She testified that she was only on the website for a short while because someone immediately asked to marry her and she stopped using the website. The records reveal the following:

- i. On June 30, 2016, AV6 asked a colleague on the outside about activating a Paper Dolls account.
- ii. On July 5, 2016, AV6 again asked for helping launching her Paper Dolls account.
- iii. On July 15, 2016, AV6 asked a colleague on the outside to activate her Paper Dolls account, again.
- iv. On December 14, AV6 exchanged messages with a colleague about selling semi-nude photos of her for money. Her colleague wrote:

"I've got a bunch of pics picked out of you... after seeing the panty flicks I'm like damn I can't be calln u sis anymore might keep a few of them for myself. u look GOOD! I'll put a couple in the folder for u to auction off get u some soups lol those pics give new meaning to CWG Cute White Girl the red bra and panties is sexy. tell me where can I get one? the girl not the clothes.i will do my best to get mom an email by Sunday. well it's 0430 better sign off love you...Big/OSP/Rich"

- v. In response to that message, AV6 wrote:

“bwhahaha!!! and thats why i luv u! and its hot pink not red bra set. kinda forgot about those :/ merry xmas lol. thank u in advance for sending those other pics. mamma will get em printed. u up awful early or awful late my biggie rich. muah! can u do me a favor and see if u can find anything on kevin treanor. friend asked about him. shadow sends his luv n respect again. today is ryders 5th bday :(not doing this again. i luv u”

- vi. On January 1, 2017, she reaffirmed that she was continuing to use Paper Dolls. The message states:

“you still laid up??? I need a pimp and you needs to be it...k...I'm already on paperdolls but will u put me on Craig's list...???? please. all ya gotta do is post a personal, lonely convict looking for some one to help pass my time or some shit, u got my pics, then email me phone numbers. PLEASE help your sis out!!! got a letter from Jeremy. I'll send a letter to dads this week for him unless u just have the addy to the trans. and who's nick hunt? sounded like I was supposed to know who he was. idk, its Jeremy, but props on getting letter. k I! rambling now, I got 1500 characters and was ---na see if I could fill it, but my texting thumbs are outta shape. I told misty to ask u about road head lol...she's cool I like her. its kinda like when Matty showed up to Powder he he. luv u I'm out...laterz

- b. In essence, the messages show that contrary to her testimony, AV6 was actively using websites like Paper Dolls to try and obtain money from persons on the outside while incarcerated at CCCF, including utilizing someone as her “pimp.” This is all information defense counsel would have sought to admit as

substantive evidence in pre-trial motions and would have had available to impeach AV6, especially when she testified directly to the contrary.

c. AV7 testified at trial that she was “not doing this for a lawsuit,” and “never was.” She denied further on cross examination saying to the FBI that she and her husband kept looking for lawyers but they shot her down. She repeatedly denied making that statement.

d. AV7’s messages show that she lied when she testified about not being interested in a lawsuit and was actively attempting to collect on her claims against Mr. Klein but was denied because of the statute of limitations. On March 28, 2023, AV7 sent a message to AV13 saying the following:

“Hay sis how's it going? Well my daughter relapsed! I'm sad about it:(I know I'm powerlessness though so I'm just trying to support her tords going to treatment before she ends up back here. She did complete trans leave so that's good. **I just saw a bill passed that there's no time limit to sue on abuse witch means me and memory's lawsuits still have action!!! Witch means I'll be buying in to your home owning property business!** Wow huh? Hay where are you? I called all day yesterday! Miss you and need to talk to you” (emphasis added)

e. In essence, AV7 lied to this court and the jury about her motive behind reporting the accusations against Mr. Klein. She clearly had a lawsuit in mind, and as of March of this year, already knew where she was going to spend the money she hoped to collect by accusing Mr. Klein of these crimes, and expressed that plan directly to another witness in the case.

f. AV7’s messages also make clear that her relationship with AV13 was much different than the picture either woman painted at trial. They were frequently in contact, with AV13 placing money on AV7’s books and attempting to visit with her in the days leading up to the trial. The strength of their relationship is

evident from the number of times they communicated and the extent of their conversations.

11. The records also reflect that multiple AVs extorted money from several people on the outside of prison during their time at CCCF. The records received by defense are filled with, at times extraordinarily graphic, sexual messages between some of the AVs and persons from the outside, while repeatedly collecting money from those individuals. None of this would necessarily be criminal or indicative of fraudulent intent. However, the content of the messages makes clear that at least some of the AVs lied repeatedly to many of the persons they were communicating with in an attempt to continue to collect money.

a. For example, AV4 repeatedly told a person named “Jared Jacob” that he was her exclusive significant other. As a response of her promises and communications, Jared Jacob’s repeatedly put money on AV4’s books, or her “allowance,” as she would call it. The messages revealed that AV4 was engaging in romantically and sexually with multiple other individuals whom she also profited financially from, all while implying or stating explicitly that each relationship was exclusive in order to continue to get them to pay her money.

b. AV11 engaged in the same type of behavior, according to the messages.

12. These are just a few of the things that we have located in the records in our limited time to review them. We are including the entire collection of records in support of our motion for a new trial for appellate review.

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13. We declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of our knowledge and belief and that this declaration was executed on the 21st day of August, 2023 in Portland, Oregon.

DATED this 21st day of August, 2023

Respectfully submitted,

s/ Amanda A. Thibeault
AMANDA A. THIBEAULT, OSB #132913

s/ Matthew McHenry
MATTHEW G. McHENRY, OSB# 043571

Attorneys for Defendant Tony Klein